

*Add a new title for CHAPTER Env-Dw 900, as follows:*

CHAPTER Env-Dw 900 PROTECTION OF WATER SOURCES

*Redesignate the title of PART Env-Ws 420 as PART Env-Dw 901, as follows:*

PART Env-Dw 901 GROUNDWATER RECLASSIFICATION

*Readopt with amendment Env-Ws 420.01, eff. 12-24-98 (doc. #6921), and renumber as Env-Dw 901.01, to read as follows:*

Env-Dw 901.01 Purpose. RSA 485-C establishes 4 classifications for groundwater, GAA, GA1, GA2, and GB. Since passage of the law, all groundwater in New Hampshire was classified as GB or GA2. The purpose of these rules is to establish criteria and procedures for groundwater reclassification and management of wellhead protection areas and other locally important groundwater.

*Adopt Env-Dw 901.02 to read as follows:*

Env-Dw 901.02 Applicability. The rules in this part shall apply to any person seeking a reclassification of groundwater as allowed under RSA 485-C.

*Readopt with amendment Env-Ws 420.02, eff. 12-24-98 (doc. #6921), and renumber as Env-Dw 901.03, to read as follows:*

Env-Dw 901.03 Definitions.

(a) “Best management practice” means “best management practice” as defined in RSA 485-C:2, II, namely “schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the risk of contamination of groundwater,” as listed in Env-Ws 421 or successor rules in Env-Wq 401.

***(b) “Boundary change” means the reclassification of some portion(s) of an area that has been reclassified pursuant to Env-Dw 901.05.***

~~(b)~~ (c) “Class” means class of groundwater.

~~(e)~~ (d) “Contact person” means an individual who can be contacted on behalf of a local entity or other person who is submitting a request to the department regarding the request.

~~(d)~~ (e) “Contributing area” means “contributing area” as defined in RSA 485-C:2, IV, namely “the land above a class of groundwater, which is the vertical projection of the defined class on the land surface.”

~~(e)~~ (f) “Department” means the New Hampshire department of environmental services.

~~(f)~~ (g) “Groundwater” means “groundwater” as defined in RSA 485-C:2, VIII, namely “subsurface water that occurs beneath the water table in soils and geologic formations.”

~~(g)~~ (h) “Inventory inspection” means a field verification conducted by the department or a

local entity to determine that an activity within a proposed groundwater classification that is identified as a potential contamination source actually uses, handles, or stores regulated substances subject to best management practices as listed in Env-Ws 421 or successor rules in Env-Wq 401.

(~~hi~~) “Local entity” means “local entity” as defined in RSA 485-C:2, X, namely “a town or city, acting through a planning board, conservation commission, water department, health officer, or other duly constituted municipal unit; a village district established under RSA 52 or its predecessor statutes; an entity established by intergovernmental agreement under RSA 53-A; or a supplier of water for wellhead protection areas tributary to wells owned by the public water system.”

(~~ij~~) “Management inspection” means a periodic inspection conducted by a local entity to ensure that potential contamination source activities are in compliance with applicable best management practices.

(~~jk~~) “New facility” means any facility established or activity commencing:

(1) After reclassification, in an area that was reclassified to GAA prior to the ***effective date of the*** 2006 readoption of this part; or

(2) After the department issues a notice pursuant to Env-Dw 901.10 that a complete reclassification application has been received, for an area that is proposed to be reclassified to GAA after the ***effective date of the*** 2006 readoption of this part, unless the department subsequently denies the reclassification request.

(~~kl~~) “Person” means “person” as defined in RSA 485-C:2, XI, namely “any individual, partnership, company, public or private corporation, political subdivision or agency of the state, department, agency or instrumentality of the United States, or any other legal entity.”

(~~lm~~) “Potential contamination source” means, as specified in RSA 485-C:7, I, human activities or operations upon the land surface that pose a foreseeable risk of introducing regulated substances into the environment in such quantities as to degrade the natural groundwater quality. Examples of potential contamination sources are listed in RSA 485-C:7, II.

(~~mn~~) “Public water system” means “public water system” as defined in RSA 485:1-a, XV.

(~~no~~) “Regulated contaminant” means “regulated contaminant” as defined in RSA 485-C:2, XIII.

(~~op~~) “Regulated substance” means any of the following, with the exclusion of ammonia, sodium hypochlorite, sodium, acetic acid, sulfuric acid, potassium hydroxide, and potassium permanganate:

(1) Oil as defined in RSA 146-A:2, III;

(2) Any substance that contains a regulated contaminant for which an ambient groundwater quality standard has been established pursuant to RSA 485-C:6; and

(3) Any substance listed in 40 CFR 302, 7-1-05 edition.

(~~pg~~) “Resource recovery facility” means any facility engaged in an activity beyond sorting or physical volume reduction methods, to treat or process solid waste into usable secondary materials or products, including but not limited to fuel, energy, or compost.

(~~qr~~) “Supplier of water” means “supplier of water” as defined in RSA 485:1-a, XVI.

(~~rs~~) “Transmissivity” means “transmissivity” as defined in RSA 485-C:2, XVI, namely “the rate at which water is transmitted through a unit width of a water-bearing formation under a unit hydraulic gradient. It is equal to the hydraulic conductivity times the thickness of the formation, and is given in units of distance squared per unit time.”

(~~st~~) “Wellhead protection area” means “wellhead protection area” as defined in RSA 485-C:2, XVIII, namely “the surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield.”

*Adopt Env-Dw 901.04 to read as follows:*

Env-Dw 901.04 Classes of Groundwater. As provided in RSA 485-C:5, I, groundwater shall be classified ~~as~~ ***in*** one of the following 4 classes:

(a) Groundwater within the wellhead protection area for wells that presently are used, or well sites that have been identified for future use, as drinking water supply for public water systems shall be GAA;

(b) Groundwater in a defined zone of high value for present or future drinking water supply shall be GA1;

(c) Groundwater within aquifers identified as highly productive for potential use as a public water supply by the U.S. Geological Survey regional groundwater studies or other regional studies shall be GA2; and

(d) Groundwater not assigned to a higher class shall be GB.

*Readopt with amendment Env-Ws 420.03 through Env-Ws 420.14, eff. 12-24-98 (doc. #6921), and renumber as Env-Dw 901.05 through Env-Dw 901.17, to read as follows:*

Env-Dw 901.05 Requests for Reclassification of Groundwater to GAA or GA1.

(a) A local entity requesting reclassification of groundwater to GAA or GA1 shall submit the following to the department on a form provided by the department:

(1) The date of the request;

(2) The name of the local entity that is submitting the request;

- (3) The name, mailing address, and daytime telephone number of a contact person and, if available, a fax number and e-mail address;
  - (4) Whether the request is for reclassification to GAA or GA1;
  - (5) The name(s) of the municipality(ies) in which the groundwater is located;
  - (6) The name(s) of the U.S. Geological Survey (USGS) 7.5 minute series quadrangle map(s) showing the area in which the groundwater is located; and
  - (7) The information specified in Env-Dw 901.06.
- (b) The request shall be signed by a duly-authorized representative of the local entity.
- (c) The signature shall constitute certification that the information provided on the form and with the request is true and complete to the best knowledge and belief of the signor.
- (d) If the local entity is a duly-constituted municipal unit, the requestor shall submit the written concurrence of the local governing body with the request, which may be in the form of certified minutes of the meeting at which the agreement occurred.
- Env-Dw 901.06 Additional Information for Requests to Reclassify to GAA or GA1. A request for reclassification submitted under Env-Dw 901.05 shall include:
- (a) If the request is for reclassification to GAA, a wellhead protection area delineation performed in accordance with Env-Dw 901.11;
  - (b) If the request is for reclassification to GA1, a definition of the contributing area of high value groundwater for present or future drinking water supply prepared in accordance with Env-Dw 901.12;
  - (c) A potential contamination source inventory report prepared in accordance with Env-Dw 901.15;
  - (d) A potential contamination source management program prepared in accordance with Env-Dw 901.16; and
  - (e) A description of the informational meeting held in accordance with Env-Dw 901.13 if the local entity chooses to hold one, including the following information:
    - a. The date of meeting;
    - b. The location of meeting;
    - c. The number of people attending; and

- d. The location where meeting notice was posted and newspaper in which it was published.

Env-Dw 901.07 Requests for Review of Groundwater Classified as GAA or GA1.

(a) A person requesting that the department review a contributing area classified as GAA or GA1 to determine if the requirements for inventory and management of potential contamination sources are being met shall submit a report to the department that details non-compliance with the criteria for the present classification.

(b) The department shall respond to a request for review under this section in accordance with the procedures outlined in RSA 485-C:9, V(a), and shall notify in writing the person requesting the review and the local entity of its actions.

(c) The department shall recommend reclassification of the contributing area to:

(1) GA2 if the area is within a highly productive aquifer identified by the USGS, per RSA 485-C:9, IV; or

(2) GB if the following criteria are met, per RSA 485-C:9, V:

a. The department finds a deficiency in the inventory and management program under review, and finds that the deficiency has not been corrected in accordance with RSA 485-C:9, V(a); and

b. The department further finds that it has inadequate resources to take over the inspection and management program.

(d) Prior to reclassification to GB or GA2, a public hearing shall be held in accordance with RSA 485-C:9, VI and Env-Dw 901.10(b).

Env-Dw 901.08 Requests for Reclassification of Groundwater to GA2.

(a) As specified in RSA 485-C:9, IV, upon receipt of a report or study which identifies areas of bedrock or stratified drift aquifers which are highly productive for public water supply, the department shall recommend to the commissioner that a reclassification to GA2 should occur if the areas:

(1) Meet the criteria for the class; and

(2) Are not already classified as GAA or GA1.

(b) A request to reclassify an area to GA2 shall include:

(1) The name, mailing address, and daytime telephone number of the requestor and, if the requestor is other than an individual, the name and daytime telephone

number of a contact person;

- (2) The date, title, and author of the report or study;
- (3) The names of the municipalities in which the groundwater is located;
- (4) A copy of the report or study; and
- (5) A narrative explaining the reasons for the request.

Env-Dw 901.09 Requests for Boundary Changes to an Existing Groundwater Classification.

(a) A person making a request ~~to~~ ***for a boundary*** change ~~one or more of the boundaries of an existing groundwater classification~~ shall make such request in writing to the department.

(b) A request ~~to~~ ***for a boundary*** change ~~one or more of the boundaries of an existing groundwater classification~~ shall include the following information:

- (1) The date of the request;
- (2) The name, mailing address, and daytime telephone number of the requestor and, if the requestor is other than an individual, the name and daytime telephone number of a contact person;
- (3) The name(s) of the municipality(ies) in which the boundaries lie;
- (4) The classification and location of groundwater under review;
- (5) The USGS 7.5 minute series quadrangle map(s) showing the existing and proposed boundaries of the groundwater classification; and
- (6) A narrative explaining the reasons for the request.

(c) If the department determines that the request is based on information not presented at the time of the initial classification of the groundwater, then the department shall take action on the request in accordance with Env-Dw 901.10.

Env-Dw 901.10 Department Action on Requests for Reclassification or Boundary Changes.

(a) Upon receipt of a request for reclassification of groundwater to GAA or GA1, for a boundary change, or for reclassification to GA2, the department shall determine whether all of the requisite information for the application has been received, as specified in:

- (1) Env-Dw 901.05 and Env-Dw 901.06 for reclassification of groundwater to GAA or GA1;

- (2) Env-Dw 901.09 for a boundary change; or
- (3) Env-Dw 901.08 for reclassification to GA2.
- (b) If the department determines that the request is complete, the department shall:
  - (1) Acknowledge receipt of the request in writing to the local entity or other person making the request and the municipality(ies) in which the groundwater is located; and
  - (2) Schedule and issue notice of a public hearing on the request in accordance with RSA 485-C:9, VI.
- (c) If the department determines that the request is not complete, the department shall notify the local entity or other person filing the request in writing of the information that is needed to complete the request.
- (d) The department shall conduct the public hearing held pursuant to (b)(2), above, pursuant to the provisions of Env-C 200 applicable to non-adjudicative hearings.
- (e) Following the public hearing, the department shall notify in writing the local entity or other person requesting the reclassification or boundary change and the municipality(ies) in which the groundwater is located of the department's decision on the request. If the request is denied, the written decision shall specify the reason(s) for the denial.

Env-Dw 901.11 Wellhead Protection Area Delineations.

- (a) A local entity requesting reclassification to GAA shall prepare, or request the department to prepare, a wellhead protection area delineations that covers each well included in the area that is the subject of the request.
- (b) If the local entity requests the department to prepare the delineation, the request shall:
  - (1) Be submitted on official letterhead; and
  - (2) Include the following:
    - a. The date of the request;
    - b. The name of the local entity;
    - c. The name, mailing address, and daytime telephone number of a contact person and, if available, a fax number and e-mail address;
    - d. The municipality in which the well is located;
    - e. The name and EPA identification number of the well;

- f. The well type;
  - g. The population and municipalities served by the well;
  - h. The name, mailing address, and daytime telephone number of the well owner;
  - i. The street address and locus map of well location;
  - j. Hydrogeological or engineering reports, if available; and
  - k. Any site specific information available for the well site, that is available, such as well siting report(s), boring logs, and pumping test report(s).
- (c) If the local entity is performing the delineation for department review, the request to review the delineation shall include all information considered in preparing the delineation.
- (d) Wellhead protection area delineations shall be based on the information specified in (b)(2), above.
- (e) Upon reclassification to GAA, any challenge to the delineated boundaries shall be made in accordance with Env-Dw 901.09.

Env-Dw 901.12 Delineations of Groundwater and Well Sites for Present or Future Drinking Water Supply.

- (a) A local entity requesting reclassification to GA1 shall identify areas that are currently used or will be used for future drinking water supply on USGS 7.5 minute series topographic maps.
- (b) The requestor under (a), above, shall provide a map, accompanied by a report, that includes the following information:
- (1) The relationship of the proposed area to existing or planned drinking water supplies, including any hydrogeologic information which supports the definition of the area drawn on the map; and
  - (2) A description of the extent to which the groundwater is or will be used for drinking water purposes.
- (c) A local entity requesting reclassification to GAA of a wellhead protection area for a well site that has been identified for future use shall submit the information specified in (a) and (b), above, and the following:
- (1) An estimate of the projected production volume of the well expressed in gallons per day;



- (2) For wells with projected production volumes under 57,600 gallons per day, a delineation of the surface area contributing to the recharge of the well or a map with a circle using a radius drawn from the well to a linear distance based upon the projected volume in accordance with Env-Ws 378.07(b)(2), Table 378-2; and
- (3) For wells with projected production volumes of 57,600 gallons per day or greater, a delineation of the surface area contributing to the recharge of the well or a map with a circle of the wellhead protection area using a radius drawn from the well to a linear distance of 4,000 feet.
- (d) For reclassifications using a delineation completed per (c)(2) or (c)(3), above, when a final wellhead protection area delineation is completed under Env-Ws 378 or Env-Ws 379, or if a more accurate delineation has been completed, the local entity shall submit the subsequent delineation to the department with a request to change the reclassification boundaries in accordance with Env-Dw 901.09.
- (e) Upon reclassification to GAA or GA1, any challenge to the delineation shall be made in accordance with Env-Dw 901.09.

Env-Dw 901.13 Informational Meeting.

- (a) An informational meeting may be held by the local entity seeking reclassification prior to performing an inventory inspection or developing a management program in order to explain to interested parties that it is seeking reclassification of groundwater.
- (b) If the local entity is not a private supplier of water, the estimated cost of seeking and maintaining reclassification shall be presented at the meeting held pursuant to (a), above.
- (c) The notice of the informational meeting shall be:
  - (1) Published by the local entity in a newspaper of general circulation in the municipality involved; and
  - (2) Posted in at least 2 public places.

Env-Dw 901.14 Performing an Inventory of Potential Contamination Sources.

- (a) A local entity requesting reclassification to GAA or to GA1 shall perform an inventory of potential contamination sources, consisting of a review of human activities and operations to determine whether potential contamination sources such as those listed in RSA 485-C:7, II are located within the area proposed to be reclassified.
- (b) The local entity requesting reclassification shall submit an inventory report in accordance with Env-Dw 901.15.

Env-Dw 901.15 Inventory Report.

- (a) The inventory report submitted pursuant to Env-Dw 901.14(b) shall include:
  - (1) The information required by RSA 485-C:8, II; and
  - (2) A description of how the inventory was performed and what sources were used to ensure its completeness.
- (b) The local entity shall provide a copy of an updated inventory report to the department every 3 years.
- (c) The local entity shall submit all inventory reports as a paper report and in a computer database format.

Env-Dw 901.16 Management Program.

- (a) A local entity requesting reclassification to GAA or to GA1 shall include in its request a plan for a potential contamination source management program that will comply with RSA 485-C:8, III.
- (b) The potential contamination source management program plan provided pursuant to (a), above, shall include the following:
  - (1) A description of the process for updating the inventory at intervals no greater than 3 years, as required by RSA 485-C:8, III(a);
  - (2) A description of the process for written notification to the owner of each potential contamination source listed in the inventory at intervals no greater than 3 years, as required by RSA 485-C:8, III(b);
  - (3) A list of the name of the owner and the site address and tax map and lot number of each property within the area proposed to be reclassified, submitted in paper format and in a computer database format suitable for ***the department to use in preparing mailing labels so as to*** in meeting the notification requirements ~~in accordance with~~ of RSA 485-C:9, VI(b);
  - (4) A list of all facilities requiring or having release detection permits issued in accordance with Env-Wm 1403 or successor rules in subtitle Env-Or within the area proposed to be reclassified;
  - (5) The process for performing a management inspection in accordance with Env-Dw 901.17 of all potential contamination sources located within the area proposed to be reclassified at least once every 3 years to ascertain compliance with best management practices for preventing groundwater contamination, provided, however, that pesticides regulated under RSA 420:28-48 and agricultural operations which are

operated in compliance with all applicable chapters of RSA title XL and best management practices developed, administered and enforced by the New Hampshire department of agriculture, markets, and food shall not be subject to inspection under these rules, pursuant to RSA 485-C:8, III, (c) (1) and (2); and

(6) An assessment of the ability of the local entity to implement and maintain the potential contamination source management program.

(c) The written notification to each potential contamination source described in (b)(2), above, shall include:

(1) The name and address of the contact person for the local entity requesting reclassification, and, for GAA areas, the location(s) of the well(s) for which the wellhead protection area was delineated;

(2) A statement that the potential contamination source is in a wellhead protection area, an area likely to have groundwater below it that is drawn to a community water supply well, or an area of potential use for future public water supply, as applicable;

(3) A statement of what the present use of the property is and a statement that it is considered to have potential for groundwater contamination;

(4) A copy of Env-Ws 421, "Best Management Practices for Preventing Groundwater Contamination" or successor rules in Env-Wq 401;

(5) A statement that any unpermitted discharge to groundwater, or contamination of groundwater, is illegal under RSA 485-A:13 and Env-Wm 1403 or successor rules in subtitle Env-Or and Env-Ws 1500 or successor rules in subtitle Env-Wq; and

(6) The name and phone number of a contact person and affiliated agency to call at the local level and at the state level to answer any questions about the program.

#### Env-Dw 901.17 Performance of Management Inspections.

(a) As required by RSA 485-C:8, III(c), the local entity shall conduct management inspections of potential contamination sources in groundwater classified as GAA or GA1 at least once every 3 years, provided, however, that pesticides regulated under RSA 430:28-48 and agricultural operations which are operated in compliance with all applicable chapters of RSA title XL and best management practices developed, administered, and enforced by the New Hampshire department of agriculture, markets, and food shall not be subject to inspection under these rules.

(b) The local entity shall provide written notice of any violations of best management practices to the owner of the potential contamination source within 30 days of the date of the management inspection.

(c) Inability to gain access to a potential contamination source for the purpose of

conducting a management inspection shall be reported by the local entity to the local health officer and to the department.

*Adopt Env-Dw 901.18 to read as follows:*

Env-Dw 901.18 Waivers.

(a) A local entity requesting reclassification of groundwater or a person requesting that the department review a contributing area classified as GAA or GA1 or reclassify an area to GA2 or GB or change one or more of the boundaries of an existing groundwater reclassification or a person responsible for implementing a management program under this part may request a waiver to any information requirement under this part, provided that the information requirement is not mandated by RSA 485-C.

(b) The department shall grant said request for a waiver to an information requirement upon finding that:

(1) The information requirement is not mandated by RSA 485-C; and

(2) Denial of the waiver request would place an ~~undue~~ financial burden on the requestor ***that is disproportionate to the value of the information required.***

APPENDIX

Rule Section(s)	State Statute(s) Implemented
Env-Dw 901.01-.04	RSA 485-C:1
Env-Dw 901.05	RSA 485-C:1-2
Env-Dw 901.06	RSA 485-C:5
Env-Dw 901.07	RSA 485-C:9, II & III
Env-Dw 901.08-.09	RSA 485-C:9, V(a)
Env-Dw 901.10	RSA 485-C:9, IV
Env-Dw 901.11	RSA 485-C:9
Env-Dw 901.12	RSA 485-C:9, VI
Env-Dw 901.13	RSA 485-C:9, II(a)
Env-Dw 901.14	RSA 485-C:9, III(a)
Env-Dw 901.15	RSA 485-C:1
Env-Dw 901.16-.17	RSA 485-C:8, II
Env-Dw 901.18	RSA 541-A:22, IV